U.S. OIL AND REFINING CO.

IBLA 93-683 Decided December 30, 1996

Appeal from a decision of the Deputy Director, Minerals Management Service, granting in part and denying in part appeals of orders requiring additional payments for purchases of royalty-in-kind oil. MMS-88-0104-O&G, MMS-88-0194-O&G, MMS-89-0186-O&G.

Reversed in part; set aside and remanded in part.

1. Administrative Authority: Generally--Oil and Gas Leases: Royalties: Generally--Statute of Limitations

   A statute establishing time limitations for the commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior.

2. Accounts: Payments--Oil and Gas Leases: Royalties: Payments

   The Department properly looks to the purchaser of royalty-in-kind oil, not the lessee producing the oil, for additional payments for that oil.

3. Administrative Practice--Administrative Procedure: Administrative Record--Administrative Procedure: Administrative Review--Administrative Procedure: Decisions--Appeals: Generally--Rules of Practice: Appeals: Generally

   When issuing a decision, MMS must not only ensure that the decision is supported by a rational basis, but that basis must be stated in the written decision and demonstrated in the administrative record accompanying the decision. An MMS decision demanding additional payments for purchases of royalty-in-kind oil will be set aside where, on appeal, MMS abandons its original expressed justification for the underpayment determinations and substitutes another rationale which was only tangentially referenced in one of the demand letters and has no record support.

APPEARANCES: Jerry E. Rothrock, Esq., and Michael S. Ray, Esq., Washington, D.C., for U.S. Oil and Refining Company; Peter J. Schaumberg,

Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

U.S. Oil and Refining Company (U.S. Oil) has appealed from the June 3, 1993, decision of the Deputy Director, Minerals Management Service (MMS), granting in part and denying it part its appeals of three orders issued by the Royalty Compliance Division of the Royalty Management Program (RMP), MMS, requiring additional payments and administrative charges in connection with U.S. Oil's purchases of royalty-in-kind (RIK) oil from two Federal oil and gas leases.

On June 1, 1980, U.S. Oil entered into an agreement to purchase RIK oil from Federal Lease Nos. 080-019382-0 and 080-020997-0 located in the Midway-Sunset Field in California (RIK Contract No. 14-08-0001-18019 (RIK Contract)). The contract required U.S. Oil to pay to MMS the market price for the RIK oil plus specified administrative charges and defined "market price" as

> the highest price per barrel regularly posted or published, or generally paid or offered, by any principal purchaser of crude oil of equal A.P.I. gravity in the field where produced, or if there are no postings in the field, the highest price posted in the nearest field where a comparable grade of crude oil is produced and sold.

(RIK Contract, Article V). Payments for the RIK oil were due on or before the last day of the calendar month following the month in which the royalty oil was delivered (RIK Contract, Article VI).

MMS-88-0104-O&G: Sun Oil Co.: Federal Lease No. 80-020997-0: Audits covering from January 1, 1977, through January 31, 1983

Pursuant to the authority granted by section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1735 (1994), the California State Comptroller's Office (State) reviewed the Federal oil and gas onshore leases located in California held by Sun Oil Company (Sun), including Federal Lease No. 80-020997-0, for the period January 1, 1977, through January 31, 1983, and determined that U.S. Oil had underpaid MMS for the RIK oil from that lease by $57,437.60. On April 30, 1986, the State sent U.S. Oil an issue letter addressing the underpayment discovered during the audit of Sun. U.S. Oil responded on July 28, 1986, providing additional information. See MMS Feb. 9, 1988, Demand Letter at 1-2.

The record does not contain copies of the issue letters sent by the State to U.S. Oil or its responses. However, we infer from other documents in the case file, including U.S. Oil's appeals of the MMS demands for additional payments, that the State had considered the prices posted by ARCO Oil and Gas Company (ARCO) as establishing the market value of the RIK oil.

In a demand letter dated February 9, 1988, MMS noted that the State's review had revealed that it had used less than the highest posted price to bill U.S. Oil for the RIK oil, resulting in U.S. Oil's failure to pay the "actual value" of the oil received within the meaning of the RIK contract. MMS directed U.S. Oil to remit an additional $57,437.60 for the value of the RIK oil purchased during the audit period, plus $287.19 in administrative charges.

U.S. Oil appealed this demand letter to the Director, MMS, arguing that the claim for underpayment was barred by both the 6-year statute of limitations found in 28 U.S.C. § 2415(a) (1994) and the doctrine of laches, and that MMS should hold Sun responsible for the underpayment since that company had provided MMS with the erroneous pricing information that MMS had used to bill U.S. Oil for the RIK oil (Notice of Appeal to MMS at 1-2). U.S. Oil contended that the prices used by the State were not representative of the pricing bases on which the purchased RIK oil was actually sold in arm's-length transactions. Id. at 2. Further, it argued that, in determining the market price for the RIK oil, the State should not have relied on the prices posted by ARCO because ARCO did not qualify as a "principal purchaser" under Article V of the RIK contract (May 16, 1988, Letter at 3-4). U.S. Oil also requested access to the records underlying the request for the additional payment (Apr. 14, 1988, Letter). This appeal was docketed as MMS-88-0104-O&G.

In the field report prepared for this appeal, MMS reduced the additional payment to $1,726.41, the amount due only for January 1983 RIK oil. The reduction reflected the November 21, 1983, determination of the Royalty Valuation and Standards Division (RVSD), MMS, that ARCO was not a "principal purchaser" of crude oil production from the Midway-Sunset field during the 1977-82 audit period, and the State's concession that its findings for that period were not supportable without reliance on ARCO's posted prices (Dec. 19, 1991, Field Report at 1). MMS noted, however, that the RVSD had issued an October 9, 1991, value determination concluding that ARCO was a "principal purchaser" of crude oil from the Midway-Sunset field during the later period 1983-85. Id. at 8. MMS considered the remainder of U.S. Oil's arguments meritless.

MMS-88-0194-O&G: Santa Fe Energy Co.: Federal Lease No. 80-019382-0: Audits covering from January 1, 1977, through December 31, 1983

In its audit, the State reviewed the Federal onshore leases in California held by Santa Fe Energy Company (Santa Fe), including Federal Lease No. 80-019382-0, for the period January 1, 1977, through December 31, 1983, and concluded that U.S. Oil had underpaid MMS for RIK oil purchased from that lease by $312,223.36. The State transmitted an issue letter to U.S. Oil concerning the underpayment on May 7, 1986, and U.S. Oil responded with supplementary data on July 30, 1986. See MMS Apr. 11, 1988, Demand Letter at 2.

On April 11, 1988, MMS issued a demand letter based on the State's review, finding that the price reported by Santa Fe and used to bill U.S.

Oil for the RIK oil was less than the highest posted price, and that, therefore, U.S. Oil had not paid the actual value of the oil received. MMS ordered U.S. Oil to pay an added $312,233.36 for the value of the oil, and an administrative charge of $1,561.12.

U.S. Oil appealed this demand letter to the Director, MMS, raising both 28 U.S.C. § 2415(a) (1994) and the doctrine of laches as precluding MMS' claim for additional payment for the RIK oil (Apr. 29, 1988, Notice of Appeal at 1-2). Since Santa Fe had provided the pricing information to MMS, U.S. Oil argued that MMS should recoup the underpayment from Santa Fe. Id. at 2. U.S. Oil further disputed the validity of the pricing bases utilized by the State as not representative of the actual value of the oil. It also requested access to the information supporting the demand. Id. This appeal was docketed as MMS-88-0194-O&G.

In the December 23, 1991, field report prepared for that appeal, MMS reduced the amount of the underpayment to the $23,422.71 due for the period January through December 1983 to correspond to the November 21, 1983, RVSD determination that ARCO was not a principal purchaser in the Midway-Sunset field prior to January 1983 (Dec. 23, 1991, Field Report at 1). MMS disputed the rest of U.S. Oil's arguments and proffered the October 9, 1991, RVSD value determination as support for the validity of the amount of revised underpayment. Id. at 7.

U.S. Oil responded to the field report, disputing the MMS conclusions that ARCO was a "principal purchaser" during 1983-85, and that ARCO's posted prices accordingly represented the market price (Jan. 27, 1992, Letter at 1-2).

MMS-89-0186-O&G: Sun Oil Co.: Federal Lease No. 080-020997-0: Audits covering from February 1, 1983, through December 31, 1986

The State conducted another review of Sun's Federal onshore leases in California, including Federal Lease No. 080-020997-0, this time for the period February 1, 1983, through December 31, 1986, and found that U.S. Oil had underpaid the Government $23,154.09 for RIK oil purchased during that period. The State communicated these findings to U.S. Oil by issue letter dated July 22, 1988. U.S. Oil responded by letter dated August 16, 1988, challenging various aspects of the State's valuation criteria. As a result of that letter, the State adjusted its determination and reduced the underpaid amount to $9,010.71. See MMS June 1, 1989, Demand Letter at 1-2.

In a demand letter dated June 1, 1989, based on the State's review, MMS concluded that the prices reported by Sun which MMS had used to bill U.S. Oil were less than the highest posted price, and, therefore, that the Government had not received the highest posted price for the RIK oil sold to U.S. Oil. Accordingly, MMS instructed U.S. Oil to pay an extra $9,010.71 for the value of the RIK oil, as shown on an enclosed schedule, plus $45.05 in administrative charges. The schedule attached to the letter, although entitled "Schedule of Additional Royalty Due February 1, 1983

through December 31, 1986," provided information only for the months March through November 1983. The schedule identified "Chevron/Arco" as the company posting the highest price for March through August 1983 and listed Chevron alone as the company posting the highest price for September through November 1983.

U.S. Oil appealed this demand letter to the Director, MMS, incorporating by reference the issues raised in the January 27, 1992, letter responding to the field report in MMS-88-0194-O&G. U.S. Oil denied that ARCO was a "principal purchaser" in the Midway-Sunset field, or that ARCO's posted price represented the "market price." It requested access to the information upon which these determinations by MMS and the State had been based (Jan. 27, 1992, Letter at 1-2). U.S. Oil also reiterated that the MMS demand was barred by the statute of limitations and laches, and that the company responsible for reporting the erroneous prices, not U.S. Oil, should be liable for any underpayment for the RIK oil. Id. at 2-3. This appeal was docketed as MMS-89-0186-O&G.

In its April 14, 1992, field report, MMS asserted that whether or not RVSD properly determined that ARCO was a "principal purchaser" in the field during the audit period was irrelevant, because the State's findings were actually based on the Chevron prices for March through November 1983 and only referred to ARCO's postings for March through August 1983 because those prices agreed with Chevron's posted prices (Apr. 14, 1992, Field Report at 3). Based on discussions with RVSD and State personnel, MMS determined that no doubt existed over Chevron's status as a "principal purchaser" from the field during the relevant time, and further, that U.S. Oil did not need any additional information to verify the accuracy of the values used by the State, as Chevron's price postings were public information. Id. MMS regarded the rest of U.S. Oil's arguments as meritless.

Decision of MMS Deputy Director

In his June 3, 1993, decision the Deputy Director consolidated the three appeals. 1/ The Deputy Director concluded that the statute of limitations, 28 U.S.C. § 2415 (1994), did not apply to this administrative proceeding and that MMS' demands were not barred by laches. 2/ He also

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1/ The Deputy Director summarized the balances due for the RIK oil based on the adjustments identified in the field reports: $23,422.71, plus $117.12 in administrative charges, for January through December 1983 RIK oil from Federal Lease No. 080-019382-0 (MMS-88-0194-O&G); $1,726.41, plus $8.63 in administrative charges for January 1983 RIK oil from Federal Lease No. 080-020997-0 (MMS-88-0104-O&G); and $9,010.71, plus $45.05 in administrative charges, for March through November 1983 RIK oil from Federal Lease No. 080-020997-0 (MMS-89-0186-O&G).

2/ Even if the statute of limitations were applicable, he found that it would not bar the assessment of $1,726.41 for the January 1983 sales month, the assessment of $23,422.71 for the period January through December 1983,

rejected U.S. Oil's contention that the lessees providing the pricing information should have been held liable for any underpayments, holding that a Federal lessee need only to timely deliver and report correct RIK volumes to satisfy its royalty responsibility for RIK oil.

The Deputy Director noted that RIK oil must be sold at not less than "market price," defined by the regulations as the highest price posted by a "principal purchaser" of crude oil of equal A.P.I. gravity in the field where produced. He adopted the RMP interpretation of a "principal purchaser" as a company that regularly purchased crude oil under arm's-length conditions, adding that RMP made such determinations on a case-by-case basis utilizing the percentages of the total crude oil available for sale under arm's-length conditions bought by each purchaser (Decision at 7). In the absence of compelling evidence to the contrary, he concluded that the data relied on by RVSD in its October 9, 1991, value determination sufficed to establish that ARCO was a "principal purchaser" in the Midway-Sunset field in 1983. Id. at 7-8. He rejected U.S. Oil's challenges to the validity of ARCO's postings as speculative and unsupported by any probative evidence. Id. at 8.

Alternatively, after recapitulating RMP's assertion that the underpayment determinations were not based solely on ARCO's postings but actually reflected Chevron's price postings for March through November 1983, the Deputy Director found that U.S. Oil had not disproven that Chevron was a major purchaser from the Midway-Sunset field during the period under appeal. Id. at 8-9. Accordingly, he granted the appeals to the extent the demand orders involved time periods before January 1, 1983, and denied them as to the time period after 1982. Id. at 9.

On appeal, U.S. Oil challenges both the factual and legal underpinnings of the Deputy Director's decision, contending that MMS has failed to prove that ARCO was a principal purchaser of crude oil in the Midway-Sunset field during any month of 1983 and objecting to MMS' refusal to provide U.S. Oil with discovery of the factual and legal bases of the underpayment claims (Supplemental Statement of Reasons (SOR) at 10, 13). Appellant asserts that MMS embraced a new, invalid interpretation of "principal purchaser" in the October 9, 1991, value determination, and that, in any event, this new construction may not be applied retroactively to sales occurring in 1983 (SOR at 15, 16). U.S. Oil also disputes the Deputy Director's conclusions that the statute of limitations is inapplicable to MMS administrative proceedings, and that the RIK oil purchaser (instead of the lessees responsible for incorrectly reporting the value of the RIK oil) is liable for underpayments for that oil (SOR at 19, 21-22).

In its answer, MMS argues that, despite the fact that the underpayment assessments were based in part on Chevron's price postings, U.S. Oil has

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fn. 2 (continued)
or the assessment attributable to payments tendered by U.S. Oil on or after June 1, 1983, since the demands for those amounts fell within the 6-year period following payment for the RIK oil.

neither asserted nor established that Chevron was not a major purchaser (Answer at 3). MMS contends that U.S. Oil had ample notice that the underpayments were grounded on Chevron's prices because those prices were listed in the schedule attached to the June 1, 1989, order and were discussed in the Deputy Director's decision (Answer at 3-4). MMS asserts that U.S. Oil's failure to challenge the validity of those prices before the Board, given that knowledge, mandates dismissal of the appeal for the period March through November 1983 (Answer at 4). MMS also maintains that, since U.S. Oil did not raise the issue of whether Chevron qualified as a principal purchaser in the appeals to the Deputy Director (who accordingly did not decide the issue), appellant has no right to appeal the issue to the Board, and the Board lacks jurisdiction to consider the question (Answer at 4-6).

In any event, MMS avers that Chevron clearly was a principal purchaser of crude oil in the Midway-Sunset field during 1983 and identifies various agreements and contracts referencing Chevron's posted prices, copies of which are attached to the answer (Answer at 6-7; Exhs. 1-5).

MMS denies that it has revised the definition of "principal purchaser," pointing out that the definition set out in the Deputy Director's decision coincides with the historical definition of "principal purchaser" cited by U.S. Oil (Answer at 7-8). Although the Deputy Director determined that ARCO was a "principal purchaser" based on this definition, MMS now states that it "no longer relies on ARCO being a principal purchaser" and requests that the Board remand the Deputy Director's decision as it applies to January, February, and December 1983 to allow MMS to withdraw the bills for those months (Answer at 8 n.1). MMS insists, however, that because Chevron was a "principal purchaser" for the period March through November 1983, the Board must affirm the underpayment demands for those months. Id.

MMS further asserts that Board precedent firmly establishes that the statute of limitations does not bar affirmance of the Deputy Director's decision, and that MMS properly billed the RIK oil purchaser, not the lessee, for the additional payments due for the RIK oil (Answer at 8-9).

In reply, U.S. Oil requests that the Board summarily grant the appeal based on MMS' disavowal of ARCO as a "principal purchaser" of crude oil in the Midway-Sunset field during 1983 (Reply at 7). Appellant avers that the MMS demands for additional payments were based solely and exclusively on the theory that ARCO, not Chevron, was a principal purchaser of crude oil in that field during each month of 1983 (Reply at 4). U.S. Oil contends that the June 1, 1989, demand letter, like the two 1988 demand letters, did not cite any company as a "principal purchaser" and hypothesizes that this failure stemmed from the fact that RVSD had not yet issued its October 9, 1991, value determination concluding that ARCO was a "principal purchaser" during 1983 (Reply at 5 n.2). U.S. Oil submits that the dearth of any data in the record divulging Chevron's posted prices or Chevron's arm's-length purchases of crude oil in the field convincingly refutes MMS' newly claimed reliance on Chevron's posted prices (Reply at 5).

U.S. Oil asserts that it has not waived its right to contest MMS' new legal theory concerning Chevron, since the demand letter appeals were not limited to challenges to ARCO's status as a principal purchaser but also included general objections to MMS' failure to prove that the postings relied upon were issued by a principal purchaser (Reply at 6-7). Appellant maintains that the evidence attached to MMS' answer completely fails to establish that Chevron was a principal purchaser of crude oil from the Midway-Sunset field during each month of 1983 (Reply at 8-9). Specifically, appellant avers that the evidence submitted for the first time on appeal does not establish: that Chevron regularly purchased crude oil from the field during any month, let alone the relevant months; that any purchases made were at arm's-length at the prices posted by Chevron; or that the volumes purchased were significant in relation to the total volume of crude oil purchased at arm's-length in that month from the field (Reply at 9-10). Should the Board find that the belated evidence establishes a prima facie case that Chevron was a principal purchaser, U.S. Oil renews its requests for relevant discovery (Reply at 11-12).

[1] As an initial matter, we reject U.S. Oil's contention that the 6-year statute of limitations at 28 U.S.C. § 2415(a) (1994) precludes the MMS demands for underpayments for RIK oil. That section, which governs the time for commencing judicial actions brought by the United States, provides in part:

> Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later * * *.

28 U.S.C. § 2415(a) (1994). This Board has held numerous times that statutes establishing time limits for the commencement of judicial actions for damages on behalf of the United States do not limit administrative proceedings within the Department of the Interior. See Texaco Exploration & Production, Inc., 134 IBLA 267, 270 (1995); Texaco, Inc., 134 IBLA 109, 116 (1995); Chevron U.S.A., Inc., 129 IBLA 151, 154 (1994), and cases cited.

A demand for additional payments for purchases of RIK oil is not a judicial action for money damages brought by the United States, but is an administrative action not subject to the statute of limitations. See S.E.R., Jobs for Progress, Inc. v. United States, 759 F.2d 1, 5 (Fed. Cir. 1985); Chevron U.S.A., Inc., supra; Alaska Statebank, 111 IBLA 300, 311-12 (1989). As the U.S. Court of Appeals for the Fifth Circuit stated in a September 7, 1994, order granting rehearing of its opinion in Phillips Petroleum Co. v. Johnson, 22 F.3d 616 (5th Cir. 1994), and affirming the district court's grant of summary judgment to the defendants in two of four consolidated cases:

> The term "action for money damages" refers to a suit in court seeking compensatory damages. The plain meaning of the statute bars "every action for money damages" unless "the complaint is filed within six years." (Emphasis added.) Thus, actions for money damages are commenced by filing a complaint. Actions that do not involve the filing of a complaint are not "action[s] for money damages." Since the government has filed no complaint, the agency action is not a[n] action for money damages." Thus, [28 U.S.C.] § 2415 is no bar.

(Order at 3-4, quoted in Texaco Exploration & Production, Inc., 134 IBLA at 270-71).

We are without authority to decide whether the statute of limitations would bar a judicial suit to collect underpayments for RIK oil; such a determination would be made by the court before which any collection proceeding is brought. See Texaco, Inc., 134 IBLA at 117; Marathon Oil Co., 119 IBLA 345, 352 (1991); Alaska Statebank, 111 IBLA at 312; see also Phillips Petroleum Co. v. Lujan, 951 F.2d 257, 259-60 (10th Cir. 1991). None of U.S. Oil's arguments persuades us that the 6-year limitation period in 28 U.S.C. § 2415(a) (1994) should be read expansively to apply to administrative proceedings. We, therefore, hold that 28 U.S.C. § 2415(a) (1994) does not prevent MMS from demanding that U.S. Oil remit additional payments for purchases of RIK oil.

[2] We also reject U.S. Oil's assertion that MMS should look for any underpayments for the RIK oil to the lessees who reported the erroneous prices. Lessees fulfill their royalty obligations by delivering the proper amount of RIK oil. See Texaco, Inc., 129 IBLA 46, 50 (1994). As the Board stated in Mobil Oil Corp., 107 IBLA 332, 333 (1989), when interpreting the offshore late payment regulation, 30 CFR 218.150(d):

> [A]s to royalty taken in-kind, the purchasers of such, not the producers of the oil, are looked to by the Department for timely payment of the production purchased and late payment charges for untimely payments. Moreover, it stands to reason, as Mobil argues on appeal, that it is the "royalty-in-kind purchaser which had an obligation to pay the government for the production delivered" and that "if anyone profited from [Mobil's] misreporting, it was the royalty-in-kind purchaser who had possession of this oil for a period of months without having to pay for it" (Statement of Reasons at 3). [Emphasis in original.]

Since the lessees' errors here were reporting errors, the Department must look to the purchaser of the RIK oil for underpayments. Texaco, Inc., 29 IBLA at 50. Therefore, MMS properly addressed its demands for additional payments for RIK oil purchases to U.S. Oil.

[3] Nevertheless, we are unable to uphold MMS' demands for additional payments for the 1983 RIK oil. MMS concedes that its bills for January,

February, and December 1983 are not supportable, and we reverse the Deputy Director's decision to the extent he upheld the underpayments demanded for those months. 3/

We also conclude that the remainder of the payments demanded are not justified by the record before us. The sale of RIK oil is governed by 30 U.S.C. § 192 (1994), which authorizes the Secretary of the Interior to sell such oil at "not less than the market price." According to the regulation applicable to the period at issue, 30 CFR 208.2(f) (1983), "market price" means "the highest price per barrel regularly posted, published, or generally paid, or offered, by any principal purchaser of crude oil of equal A.P.I. gravity in the field where produced." Although the regulations do not define "principal purchaser," MMS considers such a purchaser to be a company that regularly purchases crude oil under arm's- length conditions. MMS bases its case-by-case "principal purchaser" determinations on the percentages of the total crude oil available for sale under arm's-length conditions bought by each purchaser (Decision at 7). 4/ According to its most recent justifications, the validity of the MMS demands for additional payments hinges solely on Chevron's purported status as a "principal purchaser" of crude oil from the Midway-Sunset field during March through November 1983.

It is incumbent on MMS to ensure that its decision is supported by a rational basis, and that such basis is stated in the written decision, as well as demonstrated in the administrative record accompanying the decision. Larry Brown & Associates, 133 IBLA 202, 205 (1995); Eddleman Community Property Trust, 106 IBLA 376, 377 (1989); Roger K. Ogden, 77 IBLA 4, 7, 90 I.D. 481, 483 (1983). The recipient of the decision is entitled to a reasoned and factual explanation providing a basis for understanding and accepting the decision or, alternatively, for appealing and disputing it before the Board. Larry Brown & Associates, supra; Kanawha & Hocking Coal & Coke Co., 112 IBLA 365, 367-68 (1990); Southern Union Exploration Co., 51 IBLA 89, 92 (1980). An administrative decision is properly set aside and remanded if it is not supported by a case record providing this Board the information necessary for an objective, independent review of the basis for the decision. Larry Brown & Associates, supra; Shell Offshore, Inc., 113 IBLA 226, 233, 97 I.D. 73, 77 (1990).

3/ Since the Deputy Director's decision upheld the Feb. 9, 1988, demand letter only to the extent it required additional payments for January 1983 purchases of RIK oil from Federal Lease No. 80-020997, that demand letter has now been reversed in its entirety.

4/ The definition of "principal purchaser" found in the Oct. 9, 1991, RVSD value determination and challenged by U.S. Oil in its SOR has apparently been abandoned by MMS in favor of the interpretation adopted by the Deputy Director in his decision. Since U.S. Oil does not object to this construction (see Reply at 8, 10), we need not rule on the issues relating to the now forsaken definition.

None of the MMS demand letters at issue in this case explains in detail the basis for the State's conclusion that U.S. Oil paid less than the market value for its RIK oil purchases or discloses the data underlying the State's analysis. Nor does the record before us include copies of any of the issue letters prepared by the State or any other documents supporting the State's determinations. Those decisions thus do not provide the information necessary to conduct an objective, independent review of the basis for the MMS underpayment demands. See Great Western Onshore, Inc., 133 IBLA 386, 397 (1995).

Additionally, the casefiles submitted in the appeals of the 1988 demand letters (MMS-88-104-O&G and MMS-88-194-O&G) contain no reference to Chevron. Instead, both U.S. Oil's appeal submissions and MMS' field reports indicate that the underpayment computations derived from the State's assumption that ARCO was a principal purchaser of crude oil from the Midway-Sunset field during 1983, and that, therefore, ARCO's posted prices represented the market value of the RIK oil. We have already reversed the Deputy Director's affirmance of the February 9, 1988, demand letter (MMS-88-104-O&G) based on MMS' concession that its underpayment demands for January 1983 RIK oil are not supportable based on ARCO's pricing. Neither MMS' April 11, 1988, demand letter nor the accompanying administrative record provide notice of or support for MMS' claims that the underpayment computation was based on Chevron's posted prices and that it qualifies as a "principal purchaser" of crude oil from the Midway-Sunset field during 1983.

MMS' June 1, 1989, demand letter included an attached schedule identifying "Chevron/Arco" as the company posting the highest price for March through August 1983 and listing Chevron alone as the company posting the highest price for September through November 1983. While this schedule arguably provided some notice to U.S. Oil that MMS was relying on the prices posted by Chevron (as well as by ARCO) as determinative of the "market value" of the purchased RIK oil, MMS first explicitly announced its reliance on Chevron as a "principal purchaser" in its April 14, 1992, field report (MMS-89-0186-O&G). That report, however, did not provide a rationale for that determination, but simply indicated as follows:

> Also, per the above-noted principal purchaser determination, and from discussions with both RVSD and State personnel, we have determined that there is no doubt that Chevron was a major principal purchaser from this field during the period under appeal. Therefore, U.S. Oil's request for price posting information from MMS or the State is not merited in this situation. Since Chevron's price postings are public information, U.S. Oil can easily verify the accuracy of the State's values by checking with Chevron or by checking with the California Energy Commission Library.

(Apr. 14, 1992, Field Report at 3). This conclusory statement is devoid of supporting analysis and falls far short of providing the necessary reasoned and factual explanation for the decision. As noted above, in

order to avoid being set aside on appeal, an agency decision and supporting documentation must contain, at a minimum, enough data to support the conclusions announced therein. It is not adequate for an agency to assert that its conclusion is correct and place the burden of looking up supporting data on the recipient of the decision.

MMS' attempt to bolster its conclusion that Chevron was a "principal purchaser" via the introduction of new evidence in its answer on appeal (consisting of various agreements and contracts referencing Chevron's prices) does not overcome the deficiencies in the record before us. 5/ However, as amply demonstrated by U.S. Oil's reply to MMS' answer (Reply at 8-11), those documents do not, by themselves, establish that Chevron satisfies the definition of "principal purchaser" set out in the Deputy Director's decision.

Accordingly, the Deputy Director's decision is set aside to the extent it upheld the April 11, 1988, and June 1, 1989, demand letters for the months of March through November 1983.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed in part, and set aside and remanded in part.

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David L. Hughes
Administrative Judge

I concur:

_____
John H. Kelly
Administrative Judge

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5/ In this regard, we note that we are unimpressed by MMS' assertion on appeal that U.S. Oil is barred from disputing the conclusion that Chevron was a "principal purchaser" because it did not raise the question before the Deputy Director, MMS. Of course, it was MMS that belatedly raised that issue in an effort to provide support for its previous demand for additional moneys.

If MMS is correct that the question of Chevron's status may not properly be considered, this Board would have no choice but vacate the demand letters themselves as unsupported, as they plainly failed to present any basis on which to affirm use of Chevron's sales figures. However, in the interest of administrative economy, we instead deem it appropriate to consider the question of whether the record, as developed up until this point in the administrative review process, supports the conclusion that Chevron was a "principal purchaser."